

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1735 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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FULABHAI RANCHHODBHAI PATEL

Versus

SHANTABEN WD/O DARUBHAI JIBHAIPATEL  
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Appearance:

MR RA PATEL for Petitioners

MR BS PATEL for Respondent No. 1, 2, 3, 4, 5  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/03/2000

ORAL JUDGEMENT

The petitioners above-named, have preferred this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 challenging the order of the learned 4th Jt.Civil Judge (SD), Vadodara dated 6.10.1999

below application Exh.22 in R.C.S. No.1821/96, under which the learned trial Judge allowed the said application and permitted the respondents to amend the plaint as prayed for by them.

2. The case of the parties is that the respondents-above named, preferred the aforesaid Civil Suit for specific performance of an agreement to sale and purchase the suit property. The agreement was entered into in the year 1974. However, it was found that there were some proceedings stating that the land in question was fragment and, therefore, it cannot be sold or otherwise disposed of. However, the revenue authorities have looked into the matter and ultimately held it was released from being fragment. Thereafter, the petitioners have preferred Revision Application before the Addl.Chief Secretary, Revenue (Appeals) and the matter is pending there. However, the matter stands on the footing that as per the last orders of the revenue authorities, the land in question is not a fragment. That decision is pending before the Addl.Chief Secretary, Revenue (Appeals).

3. In the meantime, the respondents submitted the aforesaid application for amendment. By way of application for amendment, respondent sought two additional reliefs. First is that in case the Court does not grant a decree for specific performance then the respondents be awarded compensation of Rs.14,00,000/-. The second relief is that in the alternative, the suit property may be partitioned by appointing a Court Commissioner and decree be awarded accordingly.

4. The said amendment was allowed by the trial court despite objections by the petitioners and, therefore, the petitioners have filed this Civil Revision Application before this Court. It has been contended here that the amendment in fact changes the nature of the suit and, therefore, the trial court ought not to have allowed the said amendment. It is very clear that the original suit was under the Specific Relief Act for specific performance of agreement to sale and purchase of the year 1974. The respondents have now been claiming that if the said decree is not allowed then in alternative, they may be permitted to claim compensation of Rs.14,00,000/-. This is the alternative relief prayed by them. It does not change nature of the suit. Moreover, Section 21 of the Specific Relief Act provides that in appropriate circumstances, the Court has power to grant compensation. It also provides that when the plaintiff has not claimed

any such compensation in the plaint, the Court shall, at any stage of the proceedings, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation. It would be worthwhile to refer provisions contained in Section 21 of the Specific Relief Act, 1963 which is reproduced as under:

"S.21. Power to award compensation in certain cases: -

- (1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.
- (2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
- (3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.
- (4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.
- (5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint.

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation - The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by his section."

It is very clear that the law itself will provide for amending the plaint and it does not restrict that the plaint had to be amended within the limitation. Apart from the said provisions of section 21, the petitioners-above named will be at liberty to submit additional written statement to the amended plaint.

5. The Courts below trying the suit will naturally be at liberty to decide the issue in the facts and circumstances of the case, and applying the law applicable to the facts and circumstances of the case appearing in the matter. Any way, it can be said that the amendment with respect to the aforesaid additional relief does not change the nature and character of the suit. The second relief with respect to partition of the land in question has arisen because of the fact that one of the owners of the land is not party to the agreement to sale and it is contended that the agreement to sale is not binding to his share and, therefore, an additional relief has been claimed. In fact no such mention could be there in the agreement itself because the fact remains that one of the owners has not been party to the said agreement to sale. It has been contended that he was suffering from paralysis. Whatever it may be, the fact remains that if a particular owner is not a party to agreement, it can be contended that he is not a party to the agreement and, therefore, the agreement is not binding on him. In that case, in order to avoid any technical dispute in the suit, the respondent found it just and proper to amend the plaint by amending the aforesaid relief which is the outcome of the original agreement. Therefore, it is not a new case introduced by the respondent at a later stage. One more argument is that the agreement does not provide for liquidated damages and, therefore, the relief for compensation could not be added by way of amendment in the plaint. Section 21 referred to above makes it clear that when the Court feels that this not a fit case wherein the decree for specific performance should be awarded, the Court can grant a decree for compensation. Therefore, it is not obligatory that the agreement should provide for liquidated damage and if it is not provided, the Court can consider to award decree for compensation. Therefore, this argument has to be turned down.

6. The last argument is that the new reliefs are barred by limitation. Even in the case of Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604, the Hon'ble Apex Court has clearly laid down that if the amendment

relating to relief of compensation in lieu of specific performance where the plaintiff has not abandoned his relief or specific performance, the Court will allow amendment at any stage of the proceeding. This has reference to Section 21 of the Specific Relief Act and there is particular reference to proviso to sub-clause (v) of Section 21 of that Act. This shows that the amendment as sought for is permissible at any stage of the proceedings.

7. Learned Advocate for the petitioners has heavily relied upon a decision of the Apex Court in the case of Muni Lal v. Oriental Fire & General Insurance Co.Ltd., AIR 1996 SC 642. There the truck owner, on not returning of truck, merely asking for declaration that he is entitled to payment for loss of truck but not seeking consequential relief of payment of quantified amount. There, permission was sought in appeal to amend plaint to include unsought relief. The Hon'ble Apex Court, observed that the relief had become time barred at that stage and, therefore, the plaintiff-appellant could not be permitted to amend the plaint after suit for relief in question was barred by time during pendency of the proceedings. Here, the facts are different. There is already a prayer for specific performance of agreement to sale and purchase and the present respondents applied for amendment in the plaint in view of the provisions contained in Section 21 of the Specific Relief Act read with Order 6 Rule 17 of the Code of Civil Procedure Code. The prayer for specific performance has not been abandoned. The prayer added is a prayer in alternative of the main prayer. In that view of the matter, it cannot be said that even this prayer will prima facie, be time barred. However, the petitioner will be at liberty to take up the issue of limitation if he so desires and if he is so advised, when he may be given chance to file additional written statement to the amended pleading, but it appears that considering the provisions made in Section 21 of the Specific Relief Act and considering the decision reported in AIR 1992 SC 1604 (supra), the trial court was justified in permitting amendment in the plaint. One more requirement to be considered is that as per the submission of the learned Advocate for the respondent, the amendment was allowed long back and it has been carried out in the plaint. Thereafter, the issues have been framed and the evidence has been led by the respondents on the amended plaint. That though the impugned order was passed by the trial court long back and though the petitioners submitted Revision petition on 3.11.1999, it has been circulated very late at the fag end of March, 2000. This shows that the position and

situation has been totally changed and, therefore, according to his argument, the amendment which has been allowed should not be quashed by this Court. It is not necessary to go into those considerations but the facts remain that the amendment was permissible in view of Section 21 of the Specific Relief Act and, therefore, the trial court cannot be said to have committed material irregularity relating to jurisdiction. In that view of the matter, this is not a fit case wherein this Court should interfere in this Revision.

7. In view of the aforesaid, this Revision Application fails and it is ordered to be dismissed with costs of the respondents.

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msp.